

## UNITED STATES ARTMENT OF COMMERCE Patent and Trademark Office Address: COMMISSIONER OF PATENTS AND TRADEMARKS Washington, D.C. 20231

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☐ Since t	his application is in co	ndition for allowance	except for formal matters, prosecu	ition as to ti	ne merits is c	closed in
accord	ance with the practice	under <i>Ex parte Qua</i>	nyle, 1935 D.C. 11; 453 O.G. 213.		e e e e e e e e e e e e e e e e e e e	, character,
A shortened	d statutory period for r	esponse to this actio	on is set to expire		onth(s), or thi	
vhichever i	s longer, from the mail	ing date of this com	munication. Failure to respond within	in the period	for response	will cause
he applicat	tion to become abando	ned. (35 U.S.C. § 1	133). Extensions of time may be obt	ained under	the provision:	s of 37 CFR
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Claim(	s)	1 - 36			is/are pending	g in the application.
	above, claim(s)	W 524 5 \$	ER CONTRACTOR	is/aı	e withdrawn	from consideration.
Claim(	s)					s/are allowed.
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	s)		Charles To Judge No. 1989.	1 4 to 15 (8)	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	s/are rejecteu.
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-- SEE OFFICE ACTION ON THE FOLLOWING PAGES--

Serial Number: 08/937443 Page 2

Art Unit: 3737

## **DETAILED ACTION**

## Election/Restriction

1. This application contains claims directed to the following patentably distinct species of the claimed invention (A species must be picked from EACH of the Groups):

Group 1, embodiments 1-4, represented by the cardiac work (power) means, the volume means, the pressure means, and the activity means, respectively. Embodiments 1-4 being used to control the stimulation.

Group 2, embodiments 5-7, represented by the vagus nerve stimulation, heart stimulation, or the sympathetic stimulation, respectively.

Group 3, embodiments 8-10, represented by respiration means using; the inspiration determining means, the expiration determining means, and the inspiration and expiration determining means, all to control the stimulation, respectively.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, there are no claims that are allowable and generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

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Art Unit: 3737

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. A telephone call was made to Michael Jaro on 7/27/98 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

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Art Unit: 3737

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to George Evanisko whose telephone number is (703) 308-2612.

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